Supreme Court, U.S.
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No. 96-1726

In The

Supreme Court of the United States

October Term, 1996

AMERICAN INVESTORS LIFE INSURANCE COMPANY,

Petitioner,

vs.

PATRICIA KATHLEEN HUDSON,

Respondent.

On Petition for Writ of Certiorari to the Arkansas Court of Appeals

RESPONDENT'S BRIEF IN OPPOSITION

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INTRODUCTION

This action was commenced on May 2, 1985, when Pat K. Savelle filed a complaint for declaratory judgment in the Chancery Court of Sebastian County, Arkansas against the trustees of the Arkansas Nursing Home Association Employee Benefit Trust, and their successors in interest. Defendants answered and both parties moved for summary judgment. The chancery court found in favor of the Plaintiff, who had died by the time of the decision. Subsequently, the present Respondent was appointed personal representative of Mrs. Savelle's estate, and was substituted as the Plaintiff. She amended her complaint in order to seek the death benefit under the plan of insurance. Both parties again moved for summary judgment. The chancellor again held in favor of the Plaintiff. On appeal, the Arkansas Court of Appeals affirmed.

After the first decision of the court of appeals, Respondent submitted a precise claim to the Defendants, having prevailed on the declaratory judgment action that Defendants were responsible for coverage as to both the death benefit and medical coverage. The trustees of the trust, who were the initial Defendants, responded in two ways. First, they contended that no monetary amount had been established, and secondly, they contended the trust had been terminated and there was therefore no entity which could satisfy the Respondent's claim. Respondent then filed a motion in chancery court that the Defendants be required to show cause why they should not be held in contempt for failure to comply with the court's order, and further sought judgment in a specific amount against the trustees in both their representative and individual capacities.

On April 8, 1992, the chancery court entered its order and judgment, holding that Respondent was entitled to a specific monetary judgment, and that her judgment was to extend to the

trustees individually. It further found, as a matter of fact, that Respondent assumed responsibility for claims such as this one, through a series of transactions after the trust was terminated. The court also found that a witness on behalf of the Defendants, Robert Alexander, acknowledged that the fact of termination of the trust had not been disclosed to Respondent during the litigation, or to her deceased mother, although the means of that disclosure was at all times controlled by Alexander's employer. Alexander also acknowledged that the Defendant's answers to interrogatories on that issue were inaccurate.

On appeal, the court of appeals again affirmed on June 30, 1993, modifying the chancellor's decision only with respect to a comparatively small medical bill.

After the second appeal, when the Respondent's judgment continued to remain unsatisfied, Respondent amended the complaint in order to name American Investors as a party. American Investors denied responsibility, and after a trial on the merits conducted March 25, 1994, the chancellor took the matter under advisement. On May 31, 1995, the chancellor entered his decree and judgment, which was appealed by Petitioner, and which was the subject of the opinion in the Arkansas Court of Appeals which commences on page 10a of Petitioner's petition. Petitioner's petition for rehearing in the Arkansas Court of Appeals, and for review by the Arkansas Supreme Court, were both denied.

REASONS FOR DENYING THE WRIT

Petitioner has wholly failed to offer any basis for this Court to accept certiorari. Supreme Court Rule 10 makes clear that review on writ of certiorari is a matter of judicial discretion, and will be granted only for compelling reasons. Petitioner has made no effort to establish in its petition that the Arkansas Court

of Appeals has decided a federal question in a way that conflicts with the decision of another state court of last resort, or that it has decided an important question of federal law that conflicts with any decision of this Court. Petitioner simply asserts a vaguely stated constitutional argument, which was never raised in the trial court, or before the Arkansas Court of Appeals.

The Petitioner's sole point for reversal in the court of appeals was that the chancellor erred in finding the Petitioner assumed the liabilities of the Arkansas Nursing Home Association Employee Benefit Trust, on the basis that Petitioner was not the successor in interest to that trust. This case was decided by the chancellor, and affirmed by the court of appeals under traditional application of long-settled Arkansas law concerning waiver, estoppel, and privity. The Arkansas court had before it irrefutable evidence after a hearing on the merits that the Petitioner assumed the liabilities of the employee benefit trust which was its predecessor, and was the party properly answerable to Respondent.

Moreover, this Court should not grant certiorari, because the Petitioner failed to preserve the constitutional question below. This court has consistently restricted its review to questions that were raised and are apparent from the record. Petitioner's petition for review filed in the Arkansas Supreme Court (reprinted at page 34a of Petitioner's petition), asserted that the court of appeals inappropriately applied the doctrine of collateral estoppel, and prevented Petitioner from having an opportunity "to fully and fairly litigate" the case. On the contrary, Petitioner had a full and fair opportunity to litigate the issue, and simply lost on the merits. The failure of Respondent to clearly pursue its alleged constitutional claim before the state court of last resort is fatal to its petition for writ of certiorari. The Petitioner's vague reference to due process in its petition for review before the Arkansas Supreme Court is not sufficient

for Petitioner to demonstrate here that the constitutional issue was pressed or passed upon by the Arkansas Supreme Court. *See Bankers Life & Casualty Co. v. Crenshaw*, 486 U.S. 71 (1988).

CONCLUSION

The decision of the Arkansas Court of Appeals is fully supported by Arkansas law and the evidence before the Court, and the petition for certiorari should be denied.

Respectfully submitted,

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